

BEFORE THE

Federal Communications Commission

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WASHINGTON, D. C. 20554

JUL 22 1994

In the Matter of)

GC DOCKET NO. 91-98)
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY) Reexamination of the Policy
) Statement on Comparative
) Broadcast Hearings
)

To: The Commission

COMMENTS

Lisa M. Harris,¹ by her attorneys, hereby responds to the Second Further Notice of Proposed Rulemaking, FCC 94-167, released June 22, 1994.

Ms. Harris is an applicant for a construction permit for a new FM station on Channel 226A in Clarksville, Indiana (MM Docket No. 91-98).

Ms. Harris has reviewed the comments she filed two years ago in this proceeding. Those comments are still germane to the present situation. They are hereby incorporated by this reference. In particular, Ms. Harris pointed to an instance where an integrated owner has provided a superior level of service to the area reached by the station's signal. She also argued for greater reliance on broadcast experience as a factor promoting an appli-

¹ Ms. Harris was married since the filing of her previous set of comments in this proceeding. Those comments were submitted under her maiden name, Lisa M. Jenkins.

cant's ability to serve the public effectively, and to fulfill his or her commitment to participate actively in station management.

Since the earlier set of comments were filed, Ms. Harris has endured the disappointment of seeing an initial decision in her proceeding turn in favor of an applicant who had no broadcast experience, and who indeed was the pawn of a third party. The Review Board, recognizing the infirmities in that proposal, remanded it to the Administrative Law Judge for a more probing examination. The other applicant then dismissed its application pursuant to a settlement with Ms. Harris. Since the two remaining applicants in the case are burdened with comparative qualifications far inferior to Ms. Harris,² and considering the efforts expended by Ms. Harris to demonstrate her qualifications for the permit, it would be unfair indeed if the Commission adopted some system at this point which resulted in a grant of the permit to another applicant.

To the extent that the Second Further Notice indicates an intent on the part of the Commission to abandon utterly any reliance on integration of ownership and management, Ms. Harris

2 One applicant was found to be a classic "sham" limited partnership whereby various movers and shakers put on the guise of limited partners and ostensibly entrust all authority for the success of the venture to a minority with little or no financial stake in the venture, in this case a sales secretary. See 8 FCC Rcd. 875 (1993). The third applicant is owned in substantial part by individuals who do not propose to participate in management and who do not reside in the general vicinity to be served by the station or even any adjoining county or state. The principals have no substantial broadcast experience and therefore are ill-prepared to assume the reins of station operation.

would suggest that the Commission has misread the Court's mandate in Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993). There, the Court held that the Commission had failed to justify continued application of the integration criterion because it had undertaken no inquiry to determine whether integration produced any benefit to the public. The Court did not hold that integration is a useless criterion or an unlaw criterion for all time, only that the Commission to date has failed to take the steps necessary to justify continued reliance on integration, particularly in view of the changes wrought by elimination of the trafficking rule and by the Anax policy.

A wholesale abandonment of the integration criterion places at risk the constitutionality of the minority preference. In Metro Broadcasting v. FCC, 497 U.S. 547 (1990), the Supreme Court, by the narrowest of margins, upheld the Commission's minority preference only because it was tied to the integration of ownership and management, thereby assuring that the owners would be in a position to reflect their viewpoint in the programming of the station. There is a substantial risk that elimination of credit for management participation would therefore render application of any minority preference violative of the constitutional guarantee of equal protection.

In order to verify that integrated owners with proper preparation have, in the past, succeeded in a superior level of service to their communities, the Commission should institute a survey of all (or a random proportion of: existing broadcast facilities.

Those whose owners participate in management actively should be invited to describe whether and how their participation makes a positive difference in station operation and its level of community service.

It might be thought that the invitation made in footnote 4 to the Second Further Notice of Proposed Rulemaking would be adequate to achieve that purpose. However, it is doubtful that most station owners have, in the past four weeks, had the opportunity even to become aware of the fine print of that footnote. The ones who are operating stations now are not the ones most keenly interested in the comparative process in any event. Therefore, there is little reason that this invitation would have come to their attention merely in the FCC's daily releases. Most stations do not subscribe to the daily releases.

Nevertheless, Ms. Harris would point out, for example, to the well-known experience of station WCVB-TV in Boston. The owners of that station integrated themselves as promised in the operation of the station, creating what was universally regarded as the television operation in Boston that was most responsive to the needs of the community. The station virtually invented the concept of the local news magazine, and won many awards for the way in which its programming met community needs. The contrast with the former, non-integrated owners of the station could hardly have been more striking.

Another example of success is television station WGTW, Channel 48, Burlington, New Jersey. The sole voting owner of

Brunson Communications, Inc., which operates WGTW, is Dorothy Brunson. Ms. Brunson is probably the only black woman presently operating a television station in the United States, or at least the only one who is fully empowered to implement her own policies at the station. Her company won the permit for WGTW in the comparative process, and in the two years since the station went on the air, Ms. Brunson has worked far more than full-time in order to make the station a success. Without integration preference, Ms. Brunson would not have had that opportunity. Therefore, the Commission owes it to her and others like her to conduct a broader survey the effects of management participation by voting station owners.

Station WRRW, Bartlett, Tennessee, recently commenced operation under the full-time management of its sole owner, Julie Belz (sole owner of Belz Broadcasting Company). Ms. Belz is fulfilling her integration commitment, and at the same time is offering the greater metropolitan area served by the station the diversity offered by the area's only radio station fully owned and operated by a woman.

At station KASA, Phoenix, Arizona, Moises Herrera is providing a valuable service as the owner and operator of one of the few minority-owned radio stations in a region with a very substantial proportion of minority residents. KASA broadcasts in Spanish and devotes the majority of its broadcast day efforts to addressing the moral, social and spiritual needs of its listeners.

No matter what the Commission ultimately does with any preference for management participation, it should ensure that applicants are given increased credit for broadcast experience, particularly experience gained in recent years. Experience accrued thirty or forty years ago, when the industry was substantially different, is of relatively little worth now.

As to preferences for local residence, the Commission should not adopt a hypertechnical standard whereby an individual who resides within the city of license is given a preference substantially greater than one who resides merely a few miles away, but still within the general market area. If the Commission were awarding a new license for a station in Bethesda, should not disadvantage an applicant who has extensive knowledge of the vicinity, but happens to reside in Rockville. Just as radio signals extend beyond the bounds of artificial lines drawn on a map, prospective station owners can easily gain knowledge of the problems of a wider area than the immediate municipality within which they reside.

The facts as to the above criteria are already fully developed in the record of the case in which Ms. Harris is an applicant, and in other comparative cases where the record is closed. There is no need for further proceedings that would only exacerbate the cost of the comparative process to the taxpayer and the applicant.

Thus, the Commission should limit its refinement of the comparative process to, at most, a different weighting of the

factors already deemed relevant to the choice among applicants. Opening up the proceedings in which the hearing record is already closed would only produce chaos. Nor should amendments be allowed which fundamentally change the nature of an applicant's proposal.

Accordingly, the Commission should take adequate steps to demonstrate that the award of preferences for integration of ownership and management do provide benefits to the public. At the same time, the Commission should strengthen the credit awarded for broadcast experience so that those who do receive construction permits will be more likely to effectuate their proposals and provide a service that from the beginning is the product of adequate preparation for the role of station manager.

Respectfully submitted,

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